

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT Z-095 30 7458
Issued to: Simmone Andree Desvaux

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2137

Simmone Andree Desvaux

This appeal has been taken in accordance with 46 U.S.C. 239(g) and 46 CFR. 5.30-1.

By order dated 8 August 1977, an Administrative Law Judge of the United States Coast Guard at New York, New, York, suspended Appellant's seaman's documents for eight months, plus six months on twelve months' probation, after finding her guilty of a charge of misconduct. The specifications found proved alleged that while serving as Messman on board SS AUSTRAL ENVOY under of the document above captioned, Appellant did:

- (1) on or about 11 January 1977 at approximately 0800 while the vessel was at sea wrongfully assault and batter the Chief Steward, William Yang, by spitting in his face;
- (2) on or about 21 March 1977 at approximately 0945 while the vessel was at the Port Newark, N.J. wrongfully assault and batter the Master, Hector Bravo, by striking him in the face with her hand;
- (3) on 21 March 1977, at approximately 1250, while the vessel was at Port Newark, N.J., wrongfully assault and batter the Master, Hector Bravo, by striking him in the face with her hands and by kicking him with her feet.

Appellant appeared pro se at the hearing and, after an explanation (by the Administrative Law Judge) of her right to counsel and the possible consequences of her plea, waived her right to counsel and entered a plea of not guilty to each of the three specifications.

The Investigating Officer's case consisted of the testimony of five witnesses as well as documentary exhibits, most of which were copies of log book entries from AUSTRAL ENVOY.

The defense consisted of two documentary exhibits. One was a work and duty schedule of the steward's department; the other was an "Individual Notice of Dismissal" dated 3/19/77 and issued to

Appellant by the Master of AUSTRAL ENVOY.

The entire decision was served on Appellant on 13 September 1977. Appeal was timely filed, perfected on 4 November 1977.

FINDINGS OF FACT

At all times pertinent herein Appellant was serving as Messman on board SS AUSTRAL ENVOY, under authority of her Merchant Mariner's Document.

At about 0730 on the morning of 11 January 1977, while AUSTRAL ENVOY was at sea, a dispute erupted between Appellant and the Chief Steward. The Chief Steward accused Appellant of refusing to perform her assigned duties and told her that if she did not want to perform her duties she should leave the dining area. Appellant replied that only the Master could order her from the dining room. The Chief Steward went to speak to the Master (then, a Captain Russell), and upon his return he told Appellant the Master wanted to see her. Appellant went to the Master's office and upon her return to the dining area she began arguing with the Chief Steward again. Appellant then spat directly into the Chief Steward's face.

On the morning of 21 March 1977, Captain Riley, Director of Labor Relations with Farrell Lines, Inc. (owner of AUSTRAL ENVOY), came aboard the vessel at Port Newark, New Jersey, and was speaking with Captain Russell and the relief captain, Captain Bravo, in the passageway outside the ship's office. At about 0945 Appellant entered this passageway and approached the three men. At this time Appellant appeared agitated and was "screaming" about being dismissed from the vessel. Captains Bravo and Russell stepped into the ship's office, closing the door behind them. Captain Riley remained in the passageway to speak with Appellant about her dismissal. (Appellant had been dismissed by Captain Russell as the result of the incident with the Chief Steward on 11 January. Captain Bravo had come aboard the vessel to relieve Captain Russell.)

Neither Captain Russell nor Captain Bravo had spoken to Appellant. Only Captain Riley had done so. Captain Bravo opened the door to the passageway where Captain Riley and Appellant were talking. Appellant saw Captain Bravo and yelled at him. She then entered the ship's office and struck Captain Bravo in the face. Captain Bravo had said nothing prior to being struck. After Appellant struck Captain Bravo, Captain Riley escorted her out of the office. Captain Bravo then notified the Coast Guard.

Later the same day, after Coast Guard Investigating Officers had arrived, Captain Bravo (accompanied by the Investigating

Officers, the Chief Mate, the steward's department delegate, and an attorney for Farrell Lines) went to Appellant's room. Captain Bravo knocked on the door and told Appellant to come to his office so that he could read a log entry to her. She refused. The Coast Guard officers suggested that the log be read to her in her room. Captain Bravo, accompanied by those previously mentioned, entered the room and began reading the log entry concerning the earlier incident in the ship's office. Appellant was sitting on her bunk. When Captain Bravo reached that point in the log entry which recounted his being struck, Appellant became excited. She kicked Captain Bravo with both feet and struck him both hands, knocking off his glasses. Appellant was then restrained and handcuffed.

At approximately 1445 hours the same day, Appellant was escorted off AUSTRAL ENVOY by local police.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant has not disputed the facts as they appear above. Rather, Appellant attempts to outline a long history of alleged persecution and discrimination by "conspiracies" formed against her. While not entirely clear, either from her statements at the hearing or from her argument on appeal, it appears that it is Appellant's intention to present these matters as "mitigating circumstances" rather than as defenses".

APPEARANCE: Appellant, pro se.

OPINION

Appellant has offered no defense, either at the hearing or on appeal, to the charge of misconduct and supporting specifications. Prior to the hearing she was fully informed of her right to counsel and knowingly and voluntarily waived that right. The Administrative Law Judge allowed Appellant a "wide path" throughout the entire course of the hearing. She was granted every opportunity to present any evidence in her favor and was allowed great leeway during her cross-examination of the Investigating Officer's witnesses. Nevertheless, the evidence presented by the Investigating Officer stands uncontradicted. The unimpeached testimony of the two victims and three eyewitnesses, as well as the copies of the log book entries, provided substantial evidence of a reliable and probative nature establishing the charge and specifications.

The only issue left open to review is the order imposed by the Judge. Appellant argues on appeal (in what must be described as a rather confusing form) that her actions were the result of years of

discrimination (because of her sex) and persecution under conspiracies formed against her. None of these allegation is supported by any evidence of record, and in any event none would serve to justify Appellant's behavior. On the other hand there is evidence of record which shows that the assaults and batteries proved in the instant case were totally unprovoked. On this basis I cannot find that the order imposed by the Judge was either inappropriate or unduly harsh under the circumstances of this case.

The order of the Administrative Law Judge must be modified, however, for reasons completely independent of the evidence presented in this case. In a previous action against her Merchant Mariner's Document, Appellant was charged with misconduct with five supporting specifications. After finding the charge and specifications proved, the Administrative Law Judge in that case suspended Appellant's document for one month plus four months on fifteen months's probation. The charge of misconduct in the instant case arose during the fifteen-month probationary period. In the order accompanying his decision in the instant case, the Administrative Law Judge revoked Appellant's probation and incorporated with his order the earlier-imposed four month suspension.

After the decision and order in the instant case was rendered, but prior to its review on appeal, the appeal of the previous case was decided by the National Transportation Safety Board. In their opinion and order (EM-68; 18 April 1978), the Board reversed the previous decision as to three of the specifications and affirmed the decision as to the other two specifications. Nevertheless, the order of the Administrative Law Judge in that case was inexplicable vacated and set aside in its entirety. Accordingly, in order to comply with this recent order of the National Transportation Safety Board, I am compelled to modify the order of probation and incorporation of the previously-imposed four month suspension.

CONCLUSION

The findings of the Administrative Law Judge are AFFIRMED.

ORDER

The order of the Administrative Law Judge dated at New York, New York on 8 August 1977 is MODIFIED to the extent that the outright suspension of eight months is reduced to an outright suspension of four months. All other provisions of the order are AFFIRMED.

R. H. SCARBOROUGH
Vice Admiral, U. S. Coast Guard

ACTING COMMANDANT

Signed at Washington, D.C., this 3RD day of NOVEMBER 1978.

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Assault

- Spitting
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MODIFICATION OF EXAMINER'S ORDER

- based on intervening decision of NTSB with respect to separate appeal of prior case